HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.352 OF 2004
WITH
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Ashraf Ali Khan. ...Petitioner

V/s.

The Konkan Mercantile Bank Ltd.
& Anr. ..Respondents.

Ms Gauri Godse, for petitioner

Mrs. A..R.Lambay i/b Lambay & Co. for respondent No.1.

Mr.K.V.Saste, APP for State.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 28, 2005

P.C. :-

1. Heard counsel for the parties.

2. Rule, in all the threematters. Made returnable forthwith, by consent.

3. Mrs. A.R.Lambay, waives notice on instruction of M/s.Lambay & Co. for respondent No.1. Mr.K.V. Saste, APP waives notice for respondent No.2.

4. As short question is involved, petitions are

taken up for final disposal forthwith, by consent.

5. These petitions take exception to the order of conviction and sentence imposed by the lower court against the petitioner for offence punishable under section 138 of the N.I.Act, by the reason of dishonour of cheque issued by the petitioner to the respondent No.1.

6. During the course of the hearing of these petitions, it was suggested to the counsel for the respondent No.1 that as the petitioner has shown willingness to pay the entire amount in 12 instalments alongwith interest on the outstanding amount, it would be appropriate that the respondent No.1 accepts that offer; because even if the order of sentence and compensation passed by the lower court was to be upheld, the respondent No.1 would at best recover total sum of Rs.1,80,000/-, whereas under the offer made by the petitioner, the respondent No.1 would get total sum of Rs.2,65,774.02.

7. The counsel for the respondent No.1, however, submitted that it is not possible for the bank to accept such offer, but the respondent No.1 will have no objection, if that arrangement is ordered to be

observed by the parties under court order.

8. Accordingly, all the Revision Applications are disposed of, on the assurance given by the petitioner that he would pay the outstanding amount by monthly instalments as per the chart furnished by the bank. The liability to pay first instalment will commence from May, 2005 and last instalment will have to be paid by April, 2006, so as to repay the entire outstanding amount alongwith interest accrued thereon till now and future interest on the remaining amount. As per this arrangement, the total amount that would be received by the respondent No.1, on payment of last instalment in respect of all the matters, will come to Rs.2,65,774.02, as mentioned in the chart, which is taken on record.

9. The interest amount that will be charged to the petitioner will be at the rate of 16.5% per annum.

10. The petitioner will have to pay every instalment on or before 10th of every month till the last instalment is paid. No extension of time shall be granted to the petitioner for payment of any of the instalment for any reason whatsoever.

11. It is made clear that on any one default committed by the petitioner, orders passed by the lower court in respective Criminal Appeals shall stand confirmed and revived, without further reference to the court.

12. On receipt of the entire amount, as agreed to be paid by the petitioner, in terms of the chart furnished by the bank, Respondent No.1 shall forthwith release the Gold belonging to the petitioner’s brother, Naushad Ali Khan and held by them under the General lien.

13. If the petitioner discharges obligations as per his assurance given to this court, which has been accepted, the order of sentence and compensation passed by the court below will stand set aside and instead, modified to the extent of period already undergone by the petitioner.

14. Petitioner is present in the court and has agreed for the conditional order, as passed.